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Patent
51306/401:1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Thomas E. Tamburrini et al.

Serial No.: 10/797,781

Filed: March 9, 2004

**For: MULTIPLE APERTURE DATA
READER FOR MULTI-MODE OPERATION**

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) **Group Art Unit:** 2876
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) **Examiner:** Not Yet Assigned
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INFORMATION DISCLOSURE STATEMENT

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to the duty of disclosure, documents listed on the accompanying Form PTO-1449 (or equivalent) are presented for the Examiner's consideration.

Copies of listed U.S. patent documents are omitted because this application was filed after June 30, 2003 and, thus is subject to image file wrapper processing.

The items identified in this IDS may or may not be "material" pursuant to 37 CFR § 1.56. The submission thereof by Applicant is not to be construed as an admission that any such patent, publication or other information referred to therein is material or considered to be material (37 CFR § 1.97(h)), or even qualifies as "prior art" under 35 USC § 102 with respect to this invention unless specifically designated by Applicant as such.

CERTIFICATE OF MAILING
(37 C.F.R. §1.10)

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as First Class Mail in an envelope addressed to Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450.

July 27, 2004

Date of Deposit

PortInd2-4481878.1 0051306-00401

Sandi Lekar

Name of Person Mailing Paper

Sandi Lekar
Signature of Person Mailing Paper

Further explanation of items AJ, EA and EB cited:

Item AJ Wike et al. U.S. Patent No. 4,971,410; “Scanning and Collection System for a Compact Laser.”

Item EA NCR Model 7860 Hand-Held Scanner (three photographs), manufacture label dated September 1990.

Item EB *Optical Design and Development of a Small Barcode Scanning Module*, Charles K. Wike and Joseph M. Lindacher, SPIE Vol. 1398 CAN-AM Eastern 1990 pps. 119-126 (©1991 by the Society of Photo-Optical Engineers).

As understood, the NCR 7860 scanner, described in the Wike article *Optical Design and Development of a Small Barcode Scanning Module*, and illustrated in the three photographs, had the capability of switching between two different scan patterns by pressing a button on the scanner housing. Thus, the scanner had two modes: (1) a hands-free mode generating multi-intersecting lines scan pattern (see Figure 2); or (2) a hand-held mode actuated by pressing a button on the housing, the scanner then generating a scan pattern consisting of a single scan line.

The cited 4,971,410 patent (owned by NCR Corporation) describes various details and alternatives for structure and operation for a bar code scanner having the capability of switching between two different scan patterns.

Notice of Concurrent Litigation

A. Items EC and ED

On April 30, 2004, a complaint for declaratory judgment of noninfringement and invalidity of Tamburrini et al.U.S. Pat. No. 6,575,368 (the '368 patent), the grandparent to the present application, was filed in United States District Court for the Southern District of Ohio at Dayton. The suit is identified as NCR Corporation v. PSC, Inc. and PSC Scanning, Inc., Case No. 3:04cv0142. The plaintiff, NCR Corporation, alleges at paragraph 33 that:

“On information and belief, claims of the Asserted Patents are invalid, inter alia, for at least one of the following reasons: they are anticipated under 35 U.S.C. § 102; they are obvious under 35 U.S.C. § 103; the specification does not comply with 35 U.S.C. § 112, first paragraph; and the claims do not comply with 35 U.S.C. § 112, second paragraph.”

Defendants, PSC Inc. and PSC Scanning, Inc., have filed a motion to dismiss pursuant to FRCP 12(B)(1) or alternatively to sever and transfer the noninfringement and invalidity counts to the United States District Court for the District of Oregon, Eugene division, where a complaint for infringement of the same patent has been filed. The Ohio court has granted a request by plaintiff, NCR Corporation, to extend the time for filing a response to PSC’s motion to dismiss until August 29, 2004.

A. Items EE and EF

On May 5, 2004, PSC Scanning, Inc. filed a complaint for patent infringement against NCR Corporation in the United States District Court for the District of Oregon, Eugene division. The suit is identified as PSC Scanning, Inc. v. NCR Corporation, Civil Action No. 04-06137-AA. The complaint alleges that NCR has infringed the Tamburrini et al. U.S. Pat. No. 6,575,368 (the ’368 patent), the grandparent to the present application. As of the filing of this second supplemental information disclosure statement, it is understood that the complaint has not yet been served on the defendant and no answer has been filed. The court has granted the parties’ joint motion to set aside the court’s Discovery and Pretrial Scheduling Order.

INFORMATION DISCLOSURE STATEMENT FILING PROVISION:

☒ This IDS is believed to be timely in that it is being submitted under 37 CFR § 1.97(b), that is (1) within three months of the filing date of the application, which is not a continued prosecution application filed under § 1.53(d); or (2) within three months of entry of the national stage as set forth in 37 CFR § 1.491; or (3) before the mailing of a first Office action on the merits; or (4) before the mailing of a first Office action after filing a request for continued examination under § 1.114. Thus, no fee is required.

- ☒ However, if the undersigned is in error in this regard, Applicant respectfully requests that the Office consider this IDS as filed under 37 CFR § 1.97(c), if applicable, and charge the fee due under 37 CFR § 1.17(p) to the deposit account referenced below.
- ☐ However, if the undersigned is in error in this regard, Applicant respectfully requests that the Office consider this IDS as filed under 37 CFR § 1.97(c), if applicable, and a statement under 37 CFR § 1.97(e) is included below, thus no fee is required.
- ☐ This IDS is being submitted under 37 CFR § 1.97(c), that is after mailing of a first Office action on the merits, but before a Final Action under 37 CFR § 1.113 or a Notice of Allowance under 37 CFR § 1.311.
- ☐ The fee due under 37 CFR § 1.17(p) is submitted herewith.
- ☐ A statement under 37 CFR § 1.97(e) is included below, thus no fee is required. In the event that this IDS is not received before a Final Action or a Notice of Allowance, then Applicant respectfully requests that the Office consider the filing of these papers to be submitted under 37 CFR § 1.97(d) and charge the fee due under 37 CFR § 1.17(p) to the deposit account below.
- ☐ This IDS is being submitted under 37 CFR § 1.97(d), that is after a Final Action under 37 CFR § 1.113 or a Notice of Allowance under 37 CFR § 1.311, but before payment of the issue fee. A statement under 37 CFR § 1.97(e) is included below. The fee due under 37 CFR § 1.17(p) is submitted herewith.

STATEMENT UNDER 37 CFR § 1.97(e):

- ☐ Each item contained in this IDS was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this IDS.
- ☐ No item contained in this IDS was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing this statement after making reasonable inquiry, no item of information contained in this IDS was known to any individual designated in 37 CFR § 1.56(c) more than three months prior to the filing of this IDS.

☒ Applicant sets forth below concise explanation of the relevance of each document not in the English language and/or selected documents(s) in the English language.

Items DE and DF were of record and cited in the parent to the present application.

PAYMENT AND/OR AUTHORIZATION TO CHARGE FEES:

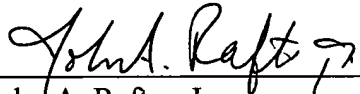
- ☐ A check in the amount of _____ is enclosed for the above fee(s).
- ☐ Please charge PSC's Deposit Account No. **13-4953** for the above fee(s).
- ☒ The Commissioner is authorized to charge PSC's Deposit Account No. 13-4953 for any fees which may be required by the filing of this paper.¹

Respectfully submitted,

STOEL RIVES LLP

Dated: July 27, 2004

By:


John A. Rafter, Jr.
Reg. No. 31,653

33451
STOEL RIVES LLP
900 SW Fifth Ave., Suite 2600
Portland, OR 97204-1268
(503) 224-3380

¹ The Commissioner is authorized to charge Stoel Rives LLP's Deposit Account No. 19-4455 if the above-referenced Account No. 13-4953 has insufficient funds.

**OFFICE OF PATENTS AND OTHER ITEMS FOR APPLICANT'S
INFORMATION DISCLOSURE STATEMENT**

APPLICANT:

Thomas E. Tamburrini et al.

FILING DATE:

March 9, 2004

GROUP:

2876

(Use several sheets if necessary)

U.S. PATENT DOCUMENTS

EXAMINER INITIAL		DOCUMENT NUMBER	DATE	NAME	CLASS	SUB CLASS	FILING DATE
	AA	4,560,862	12/1985	Eastman et al.	235	467	
	AB	4,603,262	7/1986	Eastman et al.	250	566	
	AC	4,766,297	8/1988	McMillan	235	455	
	AD	4,808,804	2/1989	Krichever et al.	235	462	
	AE	4,835,374	5/1989	Swartz et al.	235	472	
	AF	4,933,538	6/1990	Heiman et al.	235	462	
	AG	4,938,551	7/1990	Matsumoto	350	6.7	
	AH	4,939,355	7/1990	Rando et al.	325	467	
	AI	4,939,356	7/1990	Rando et al.	235	467	
	AJ	4,971,410	11/1990	Wike et al.	350	6.5	
	AK	4,978,860	12/1990	Bayley et al.	250	568	
	AL	5,000,529	3/1991	Kato et al.	999	006.7	
	AM	5,059,779	10/1991	Krichever et al.	235	467	
	AN	5,073,702	12/1991	Schuhmacher	235	467	
	AO	5,124,539	6/1992	Krichever et al.	235	472	
	AP	5,146,463	9/1992	Rando	372	24	
	AQ	5,151,581	9/1992	Krichever et al.	235	467	
	AR	5,175,421	12/1992	Harris	235	467	
	AS	5,198,650	3/1993	Wike, Jr.	235	472	
	AT	5,206,491	4/1993	Kato et al.	235	467	
	AU	5,229,591	6/1993	Heiman et al.	235	472	
	AV	5,235,167	8/1993	Dvorkis et al.	235	462	
	AW	5,250,791	10/1993	Heiman et al.	235	462	

EXAMINER:

DATE CONSIDERED:

EXAMINER: Initial if reference is considered, whether or not citation is in conformance with MPEP 609; Draw line through citation if not in conformance and not considered. Include a copy of this form with next communication to applicant

**LIST OF PATENTS AND OTHER ITEMS FOR APPLICANT'S
INFORMATION DISCLOSURE STATEMENT**

APPLICANT:
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JUL 30 2004

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AX	5,268,565	12/1993	Katoh et al.	235	467	
AY	5,296,689	3/1994	Reddersen et al.	235	467	
AZ	5,314,631	5/1994	Katoh et al.	235	467	
BA	5,317,166	5/1994	Tafoya	250	568	
BB	5,329,103	7/1994	Rando	235	462	
BC	5,340,971	8/1994	Rockstein et al.	235	472	
BD	5,468,951	11/1995	Knowles et al.	235	472.01	
BE	RE35,117	12/1995	Rando et al.	235	375	
BF	5,475,207	12/1995	Bobba et al.	235	467	
BG	5,478,997	12/1995	Bridgelall et al.	235	462	
BH	5,479,011	12/1995	Rudeen et al.	250	235	
BI	5,491,328	2/1996	Rando	235	462	
BJ	5,504,316	4/1996	Bridgelall et al.	235	462	
BK	5,528,024	6/1996	Rockstein et al.	235	472	
BL	5,629,551	5/1997	Nakura et al.	257	470	
BM	5,637,856	6/1997	Bridgelall et al.	235	472	
BN	5,691,528	11/1997	Wyatt et al.	235	462	
BO	5,693,930	12/1997	Katoh et al.	235	467	
BP	5,719,385	2/1998	Wike, Jr. et al.	235	467	
BQ	5,750,975	5/1998	Meyerson et al.	235	472	
BR	5,818,028	10/1998	Meyerson et al.	235	472	
BS	5,834,749	11/1998	Durbin	235	454	
BT	5,837,987	11/1998	Koenck et al.	235	462	
BU	5,861,615	1/1999	Bridgelall et al.	235	462	
BV	5,988,508	11/1999	Bridgelall et al.	235	462.4	

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BW	6,000,619	12/1999	Reddersen et al.	235	462.45	
BX	6,053,413	4/2000	Swift et al.	235	472.01	
BY	6,161,759	12/2000	Moss et al.	235	462.01	
BZ	6,164,546	12/2000	Kumagai et al.	235	472.01	
CA	6,247,647	6/2001	Courtney et al.	235	462.36	
CB	6,257,492	7/2001	Bressler et al.	235	462.43	
CC	6,279,829	8/2001	Hems et al.	235	462.01	
CD	6,651,890	11/2003	Byun et al.	235	462.45	

FOREIGN PATENT DOCUMENTS

EXAMINER INITIAL		DOCUMENT NUMBER	DATE	COUNTRY	CLASS	SUB CLASS	TRANSLATION	
							YES	NO
	DA	0 539 054 A1	4/1993	EP	G06K	7/10		
	DB	0 755 018 A2	1/1997	EP	G06K	7/10		
	DC	0 772 147 A2	5/1997	EP	G06K	7/10		
	DD	0 799 591 A2	6/1997	EP	G06K	7/10		
	DE	07-183768	7/1995	JP	G06K	7/10		X
	DF	09091368	4/1997	JP	G06K	7/10		X ¹

OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, etc.)

EA	NCR Model 7860 Hand-Held Scanner (three photographs); manufacturer label dated Sept. 1990.
EB	Article entitled <i>Optical Design and Development of a Small Barcode Scanning Module</i> , Charles K. Wike and Joseph M. Lindacher, SPIE vol. 1398 CAN-AM Eastern 1990 pp. 119-126 (@1991 by the Society of Photo-Optical Engineers).
EC	Complaint for Patent Infringement and Declaratory Judgment, <u>NCR Corporation v. PSC, Inc. and PSC Scanning, Inc.</u> , Case No. 3:04cv0142 (S.D. Ohio, Dayton), filed April 30, 2004.
ED	Civil Docket, <u>NCR Corporation v. PSC, Inc. and PSC Scanning, Inc.</u> , Case No. 3:04cv0142 (S.D. Ohio (Dayton)), printed July 8, 2004.

¹ Copy of English abstract provided

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FORM PTO-1449

ATTY. DOCKET NO.

51306/401:1 US

SERIAL NO.

10/797,781

O-I-P-E
JUL 30 2004
PATENT & TRADEMARK OFFICE
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(Use several sheets if necessary)

EE

Complaint for Patent Infringement, PSC Scanning, Inc. v. NCR Corporation, Civil Action No. 04-6137-AA (D. Oregon, Eugene), filed May 5, 2004.

EF

Civil Docket, PSC Scanning, Inc. v. NCR Corporation, Civil Action No. 04-6137-AA (D. Oregon (Eugene)), printed July 8, 2004.

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